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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

IN THE MATTER OF THE APPLICATION OF EDWARD J. ROSEWELL, COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS, FOR JUDGMENT AND ORDER OF SALE AGAINST LANDS AND LOTS UPON WHICH GENERAL REAL ESTATE TAXES AND SPECIAL ASSESSMENTS REMAIN UNPAID FOR THE YEAR 1982, etc.,

Defendants-Appellees,

OBJECTION OF CHICAGO TITLE AND TRUST COMPANY, as Trustee, individually and on behalf of all persons similarly situated,

and

OBJECTION OF FREDRICK BLUM,

Objectors-Appellants.

On Appeal From The Supreme Court Of Illinois

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

I. Does the Illinois statute providing for a judicially supervised annual sale of tax delinquent real estate satisfy the due process requirement of the 14th Amendment to the United States Constitution in accordance with the decision of this Court in *Mennonite Board of Missions v. Adams*, ... U.S. ....., 103 S.Ct. 2706 (1983), where this statutory scheme requires the only notice by mail prior to the sale to be to the last assessee on the tax collector's warrant book (which may or may not at that time be an actual owner or interested party) and otherwise by general publication, but does not require that notice be given to mortgagees or other interested parties of record.

II. If such notice does not comply with *Mennonite*, does actual notice to interested parties after the sale but prior to redemption, placing an additional burden on such parties, cure the Illinois due process deficiencies, especially under the holding of *Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187.

PARTIES

This case was brought by two separate parties, namely Chicago Title and Trust Company, as Trustee and Fredrick Blum, each raising issues independently, and their causes were consolidated at trial and on review. These parties to the proceedings in the Supreme Court of Illinois are contained in the caption of the case in this Court. Pursuant to Rule 28.1 of the Supreme Court of the United States Revised Rules, the parent company of Chicago Title and Trust is Lincoln National Life Insurance Company.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES	ii
TABLE OF AUTHORITIES	iv
Cases	iv
Statutory Provisions	v
OPINION BELOW	1
GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED	2
STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	3
Introduction	3
Illinois Statutory Tax Sale Scheme	4
Pre-Sale Notice Provisions	4
Proceedings At The Judicial Sale	5
The "Sale" (Bidding Between Tax Buyers On The Penalty Interest)	5
Redemption From The Sale	6
Notice Prior To The Expiration Of The Redemption Period, And After The Sale	7
Confirmation Of Compliance With The Statute	7
Controlling Facts In This Case	8

THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION 12

INTRODUCTION 12

INADEQUACY OF NOTICE PRIOR TO JUDICIAL SALE 12

NOTICE AFTER SALE DOES NOT CURE LACK OF PRIOR NOTICE 14

CONCLUSION 16

APPENDICES

Appendix A (Opinion of Illinois Supreme Court) . 1a-8a

Appendix B (Order of Illinois Circuit Court) .. 9a-10a

Appendix C (Notice of Appeal) 11a-12a

Appendix D (Statutory Provisions) 13a-34a

TABLE OF AUTHORITIES

Cases Pages

Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187 (1965) 15, 16

First Pennsylvania Bank v. Lancaster County Tax Claim Bureau, ... U.S. ....., 103 S.Ct. 3530 (1983) 17

Mennonite Board of Missions v. Adams, ... U.S. ....., 103 S.Ct. 2706 (1983) ..... *passim*

Russell Creek Land Co. v. Charjuan Inc., ... U.S. ....., 103 S.Ct. 3529 (1983) 17

Statutory Provisions

Section 225 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §706 ..... 2, 4, 10, 13
Section 230 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §711 ..... 2, 5, 10, 13
Section 235 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §716 ..... 2, 5
Section 238 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §719 ..... 2, 5
Section 243 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §724 ..... 2, 5
Section 245 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §726 ..... 3, 5
Section 248 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §729 ..... 3, 6
Section 253 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §734 ..... 3, 7
Section 263 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §744 ..... 3, 7, 12
Section 266 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §747 ..... 3, 8

In The

Supreme Court of the United States

October Term, 1983

IN THE MATTER OF THE APPLICATION OF EDWARD J. ROSEWELL, COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS, FOR JUDGMENT AND ORDER OF SALE AGAINST LANDS AND LOTS UPON WHICH GENERAL REAL ESTATE TAXES AND SPECIAL ASSESSMENTS REMAIN UNPAID FOR THE YEAR 1982, etc.,

Defendants-Appellees,

OBJECTION OF CHICAGO TITLE AND TRUST COMPANY, as Trustee, individually and on behalf of all persons similarly situated,

and

OBJECTION OF FREDRICK BLUM,

Objectors-Appellants.

On Appeal From The Supreme Court Of Illinois

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the Supreme Court of Illinois, which appears in the Appendix A, is reported at 99 Ill.2d 407.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

This is an appeal from the decision of the Supreme Court of Illinois entered on January 20, 1984 upholding an Illinois statute from an attack based on federal due process grounds. Notice of Appeal was filed with the Supreme Court of Illinois on April 12, 1984. This Court has jurisdiction of this appeal pursuant to 28 U.S.C. §1257(2).

28 U.S.C. §2403(b) may be applicable.

STATUTORY PROVISIONS

The pertinent text of each of the following constitutional provisions and statutes is set forth in the Appendix D at the page numbers listed below:

Page

Section 225 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §706 ..... 13a

Section 230 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §711 ..... 15a

Section 235 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §716 ..... 16a

Section 238 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §719 ..... 18a

Section 243 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §724 ..... 19a

Section 245 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §726 ..... 19a

Section 248 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §729 ..... 20a

Section 253 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §734 ..... 21a

Section 263 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §744 ..... 26a

Section 266 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §747 ..... 32a

STATEMENT OF THE CASE

Introduction

These consolidated actions attack the notice provisions of the Illinois statutory scheme for sale of property for payment of delinquent real estate taxes as being in violation of due process requirements proclaimed in *Mennonite Board of Missions v. Adams*, ... U.S. ....., 103 S.Ct. 2706 (1983). One action was brought by a mortgagee claiming a lack of provision for notice prior to the tax sale. The other case was brought by a taxpayer seeking to prevent dissipation of public funds resulting from such tax sales which if void and unconstitutional would require refunds and great public expenditures.

These actions were brought prior to the Cook County, Illinois tax sale scheduled for November, 1983. Following an order of the trial court sustaining the State's motion to dismiss, the Illinois Supreme Court granted a motion to stay the sale, and allowed a direct appeal. After oral argument on an expedited schedule, the Illinois Supreme Court upheld the statutory scheme. A copy of the

opinion, issued on January 20, 1984, is set out in Appendix A. The Court subsequently extended the stay of the tax sale, pending this appeal.

Illinois Statutory Tax Sale Scheme

There is no dispute as to the terms of the State statutory scheme. The statutes involved are set out in full in Appendix D. These provisions are arcane and intricate.[1] In sum, the provisions, including those as to notice of the Illinois system, are as follows:

Pre-Sale Notice Provisions

The annual sale of tax delinquent real estate in Illinois is commenced by publication by the county collector of the county involved of an advertisement which gives notice of an intended application to the circuit court of the county involved for judgment for sale of tax delinquent land. This advertisement must be once published at least ten (10) days prior to the day on which judgment is to be prayed and is to contain the following: a list of the real estate; the name of owners, if known; the amount of delinquent taxes and years for which the taxes are due; the date that application for judgment will be made; and the date and the place where the sale of the real estate for which an order is given shall be held. (Section 225 of the Illinois Revenue Act of 1939, Ill. Rev. Stat., 1983, ch. 120, §706, Appendix D, p. 13a).

In addition, not less than fifteen (15) days before the date of application for judgment for sale of the tax delin-

[1] The Taxpayer in this action cited Franz Kafka, *Parables and Paradoxes* in the proceedings below to explain a system which appears understandable only to those who operate inside of it.

quent property, a notice of the application must be sent by registered or certified mail to the person shown by the current collector's book to be the party in whose name the taxes were last assessed. (Section 230 of the Illinois Revenue Act of 1939, Ill. Rev. Stat., 1983, ch. 120, §711, Appendix D, p. 15a).

Proceedings At The Judicial Sale

At the hearing on the application of the county collector, the court hears any defense or objection to the entry of judgment and order of sale, and if satisfied that there are no proper defenses or objections, enters a judgment and order of sale (Section 235 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §716, Appendix D, p. 16a). Any aggrieved party is afforded a limited right of appeal (Section 238 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §719, Appendix D, p. 18a).

The "Sale" (Bidding Between Tax Buyers On The Penalty Interest)

All property against which a judgment is entered is then "sold" at "a public auction" (Section 243 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §724, Appendix D, p. 19a). The bidding, as provided by the statute, is merely a bidding down by competitive tax buyers as to the percentage of the penalty on the full tax liability each will accept upon a redemption from the "sale." The bidder accepting the lowest penalty is the successful bidder and becomes the purchaser at the "sale." No bidder may bid more than a penalty of 18% of the amount of such tax (Section 245 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §726, Appendix D, p. 19a). After the bidding for the property, upon payment of the delinquent tax plus interest and requisite fees,

the county clerk issues a certificate of purchase to the purchaser (Section 248 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §729, Appendix D, p. 20a).

Redemption From The Sale

Redemption may be made from the sale within two years from the date of the sale for vacant, non-farm real estate, real estate containing an improvement consisting of a structure or structures each of which contain seven (7) or more residential units and for real estate which is commercial or industrial property, or within two and one-half years from the date of sale if the real estate is improved with a structure consisting of at least one and not more than six (6) dwelling units if one or more of the dwelling units is occupied by the owner or owners thereof as his principal place of residence at the date of the expiration of two years from the date of sale. The redemption price varies, depending upon when the redemption takes place. The redemption price during the first six months after sale is the amount of the taxes plus the amount of penalty. If redemption occurs between six and twelve months after sale, the redemption price is for the amount for which the property was sold together with twice the amount of penalty bid; if between twelve and eighteen months it is the amount for which the property was sold together with three times the amount of the penalty bid; if between eighteen months and two years the amount is the amount for which property was sold together with four times the amount of the penalty bid; and if between twenty-four months and thirty months the amount for which the property was sold together with five times the amount of penalty bid at the sale. Therefore, the maximum redemption price that can occur is the amount of the taxes for which the property is sold plus

90% (18% is the maximum penalty and five (5) is the maximum multiplier.) In addition, the party redeeming must pay the amount of all taxes and special assessments accruing after the date of sale together with penalties where the taxes and assessment have been paid by the tax purchaser, and must pay certain fees and costs, including the cost of notice of the sale (Section 253 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §734, Appendix D, p. 21a).

Notice Prior To The Expiration Of The Redemption Period, And After The Sale

Not more than five nor less than three months prior to the expiration of the period of redemption, the successful tax buyer must cause a notice in the form prescribed by statute to be personally served by the sheriff on all parties interested in the property, including owners, mortgagees, trustees, judgment creditors, lessees, and all persons in occupancy and/or possession of the premises (unless upon diligent inquiry they cannot be found in the county whereby substituted service may be provided by publication and mailing). In addition, not more than five nor less than three months prior to the expiration of the period of redemption the clerk of the circuit court must send similar notice by certified mail to all owners and parties in possession of the premises. (Section 263 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §744, Appendix D, p. 26a).

Confirmation Of Compliance With The Statute

After the period of redemption has expired, a hearing is held by the court to determine whether the tax purchaser has complied with all statutory prerequisites including the service of the notice required. At that hear-

ing, owners and other interested parties may appear and present any defenses to the tax deed petition and contest the sufficiency of compliance by the tax purchaser with the statutory requirements mandated by the Illinois Revenue Act. If the court is satisfied that all statutory prerequisites have been fulfilled, upon presentation of a transcript which becomes part of the record, the court orders the county clerk to issue a tax deed (Section 266 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §747, Appendix D, p. 32a). However, if the prerequisites of the statute have been complied with, no relief from the sale is available to the owner, mortgagee, or other interested party.

CONTROLLING FACTS IN THIS CASE

The pertinent facts are for the most part reflected from the allegations of the complaint (which for this purpose must be admitted as true since the dismissal is based on a motion to dismiss).

Chicago Title and Trust Company, as Trustee (CT&T), was the trustee under a certain trust deed (which is an Illinois mortgage device) dated July 9. 1982 between itself and Dr. Kurtiss J. Richardson and Diane Davis, as mortgagors for a certain parcel of real estate located in Chicago, Illinois. The trust deed was recorded by the recorder of deeds of Cook County which recordation is a public record. CT&T is named as grantee of the subject property in the grantor/grantee index of real estate which is a public official record of Cook County, Illinois. CT&T maintained an office at 111 West Washington Street, Chicago, Illinois and is a company well known to Edward Rosewell, Treasurer and County Collector of Cook County (County Collector).

At least fifteen (15) days prior to November 4, 1983 County Collector mailed a notice to Diane Davis Richardson providing in part that he intended to apply for a judgment and order of sale against all 1982 delinquent taxes on November 4, 1983 in the Circuit Court of Cook County in accordance with the Illinois State Statutes and that he would commence the annual sale of 1982 delinquent real estate taxes commencing November 21, 1983. The notice also advised her that in the event her taxes were not paid in full, they would be included in the sale. In addition, the County Collector caused a notice of said application for judgment and order and commencement of tax sale to be made by publication in a newspaper, but said newspaper notice listed only the name of Diane Davis Richardson as a person having an interest in the subject property.

On November 4, 1983, the County Collector filed an application in the Circuit Court of Cook County seeking an order of judgment and sale against approximately 120,000 parcels of real estate which had been returned delinquent for the non-payment of 1982 real estate taxes.

On November 10, 1983, CT&T filed an objection to the application of the County Collector to the Circuit Court of Cook County for judgment and order of sale of tax delinquent property. The basis for the objection of CT&T was that although its interest was of record, and CT&T could easily be located, no notice was given to it regarding the application for judgment and order of sale of the tax delinquent property upon which it had the Trust Deed. CT&T contended that although there was notice given to the last assessee of the real estate and there was a publication notice regarding the sale, no actual notice was given to CT&T nor was its name specifically mentioned in the publication notice. Therefore, CT&T

alleged that the notice provisions in Sections 225 and 230 of the Illinois Revenue Code of 1939 (Ill. Rev. Stat. 1983, ch. 120, §§706 and 711, Appendix D, pp. 13a, 15a) are insufficient, thereby making the Illinois statutory scheme for the annual sale of tax delinquent properties unconstitutional under the 14th Amendment to the Constitution of the United States and Section 2 of the Illinois Constitution in that there was not adequate notice of the application for judgment and order of sale of the delinquent property to all persons having a property interest such as a recorded Trust Deed. The objection further contended that the lack of notice controverted the decision of the United States Supreme Court in *Mennonite Board of Missions v. Adams*, ... U.S. ....., 103 S.Ct. 2706 (1983). CT&T requested the Circuit Court to order a withdrawal of the parcel in which it had an interest from the application for judgment and order of sale and to dismiss the application of the County Collector as to the parcel of the tax delinquent real estate in which it had an interest.

The objection was filed by CT&T, both individually and for a class of all parties similarly situated, namely those persons whose names and addresses are registered or recorded as having property interests in tax delinquent properties and were entitled to actual notice of the application for the judgment and order of sale. The class action counts of the objection prayed that the court find it had no jurisdiction to enter judgment and sale against the properties involving CT&T and the class it represents.

On November 16, 1983, Fredrick Blum (Blum) also filed an objection to the application of the County Collector. He filed such objection in his capacity as a taxpayer in order to prevent the dissipation of public funds in holding such sale, contending that the sale would be void and unconstitutional by reason of the fact that proper notice

to persons owning or otherwise interested in the real estate to be sold had not been given as required by the due process clause of the United States and Illinois Constitutions as decided in *Mennonite*, and therefore refunds would have to be made. Blum alleged that the only required notice to be given was to the current assessee of record and that party may or may not have an interest in the real estate. Blum prayed that the Circuit Court deny the application for sale.

The County Collector filed a motion to dismiss the objections of both CT&T and Blum on the ground that among other things, sufficient notice was given. The Circuit Court granted such motion to dismiss on November 18, 1983, a copy of said order being attached in Appendix B.

The Illinois Supreme Court granted motions of CT&T and Blum to file a direct appeal to said court, and stayed enforcement of the Circuit Court's order permitting the sale of the tax delinquent property, pending the outcome of the expedited hearing before said Court.

On January 20, 1984, the Illinois Supreme Court affirmed the Circuit Court's granting of the motion to dismiss, a copy of such opinion being attached in Appendix A. On February 8, 1984 the Illinois Supreme Court granted the motions of CT&T and Blum to stay its mandate until this Court is afforded an opportunity to rule on this appeal.

THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION

INTRODUCTION

In this case, the Illinois Supreme Court has virtually ignored the application of the decision of this Court in *Mennonite v. Adams*, ... U.S. ....., 103 S.Ct. 2706 (1983). Illinois does not provide for effective notice prior to tax sales. The Illinois Supreme Court has attempted to cure this deficiency by upholding the statutory scheme on the ground that notice is given after the sale.

INADEQUACY OF NOTICE PRIOR TO JUDICIAL SALE

Notice is inadequate under *Mennonite v. Adams*, ... U.S. ....., 103 S.Ct. 2706 (1983) because Illinois merely requires mailed notice to the last recorded assessee (who may or may not be an owner) and by publication. There is no actual notice required as to mortgagees and other interested parties of record.[2]

In *Mennonite* this Court struck down a similar system in effect in Indiana. In so ruling this Court held at page 2711 of 103 S.Ct.:

> "Since a mortgagee clearly has a legally protected property interest, he is entitled to notice reasonably calculated to apprise him of a pending tax sale."

[2] Contrast this to the notice *after* sale, which, as is previously pointed out, is required to be served upon the owners, occupants and all parties interested in this property. (§263 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §744, Appendix D, p. 26a). This is argued at page 14 below.

This Court, in *Mennonite*, held that the Indiana tax sale statutory scheme providing for notice by posting and publication together with notice to the owner of the property by mail was insufficient notice to the morgageee. In that opinion, this Court held:

> "Neither notice by publication or posting, nor mailed notice to the property owner, are means 'such as one desirous of actually informing the [mortgagee] might reasonably adopt to accomplish it' ". (p. 2711 of 103 S.Ct.)

The pre-sale notice provisions of the Illinois statutory scheme for the annual sale of tax delinquent property is similar to the pre-sale provisions of the Indiana statute that were stricken by this Court in *Mennonite* since the Illinois statute provides only for notice by mail to the last assessee of the property, and notice otherwise solely by publication (Sections 225 and 230 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §§706 and 716, Appendix D, pp. 13a, 16a).

The Illinois Supreme Court tried to sidetrack the striking similarity between the Illinois and Indiana statutory pre-tax sale notice provisions by elaborating on the following substantive differences between the Illinois and Indiana tax sale procedures: the Indiana statute allows the tax sale to take place without judicial proceeding as required in Illinois; Indiana permits property to be sold to the highest bidder whereas in Illinois the amount cannot be greater than delinquent taxes plus interest, penalty and costs; the Indiana statute grants a lien against the real property for the entire amount paid at the tax sale rather than the amount of delinquent taxes; Indiana permitted a deed to issue to the tax buyer automatically at the end of the redemption period while Illinois requires a second judicial proceeding after all interested parties

have received notice. (p. 5 of opinion, Appendix A, p. 6a). The fact remains that in spite of other differences, the notice provisions are almost identical. The Court's efforts to distinguish amounts to a distinction without a difference.

Thus, there is a conflict between the decision of the Illinois Supreme Court and the decision of this Court in *Mennonite*.

NOTICE AFTER SALE DOES NOT CURE LACK OF PRIOR NOTICE

The fact that the Illinois statutory scheme requires notice after the tax sale, but before redemption, does not cure the lack of notice prior to the tax sale.

In *Mennonite*, Justice Marshall said:

> "This appeal also presents the question whether, before the county auditor executes and delivers a deed to the tax-sale purchaser, the mortgagee is constitutionally entitled to notice of its right to redeem the property . . . Because we conclude the the failure to give adequate notice of the tax sale proceeding deprived the appellant of due process of law, we need not reach this question." (Footnote 6, p. 2712 of 103 S.Ct.)

The only inference that can be made from the footnote is that since there was a lack of notice of the tax sale, notice of redemption has no bearing.

The Illinois Supreme Court glossed over footnote 6, finding the due process inadequacies prior to sale under *Mennonite* cured by the after tax sale notice provisions. The Court stated:

> "As we have previously stated herein, notice by mail is given to the mortgagee prior to the expiration of the redemption period" (p. 6 of opinion, Appendix A, p. 8a).

Thus, there is a conflict between the decision of the Illinois Supreme Court and footnote 6 of the decision of this Court in *Mennonite*.

In *Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187 (1965), this Court held that inadequate notice prior to judicial proceedings was not cured by subsequent notice, particularly where a party was not restored to the position he would have occupied had due process of law been accorded to him in the first place.

In *Armstrong v. Manzo*, at pp. 551-552, this Court held:

> "The Texas Court of Civil Appeals . . . held . . . that whatever constitutional infirmity resulted from the failure to give petitioner notice had been cured by the hearing subsequently afforded to him upon his motion to set aside the decree. 371 S.W. 2d at 412. We cannot agree.
>
> "Had the petitioner been given the timely notice which the Constitution requires, the Manzos, as the moving parties, would have had the burden of proving their case as against whatever defenses the petitioner might have interposed.
>
> ". . . Yet these burdens would not have been imposed upon him had he been given timely notice in accord with the Constitution.
>
> "A fundamental requirement of due process is "the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would have wiped the slate clean. Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place. . . ."

In Illinois, the notice between the time of the tax sale and redemption does not afford an affected party an opportunity to be restored to the position he would have occupied if due process of law were afforded him in the first place. If the petition for deed shows compliance with the statutory requisites, including the limited pre-sale notice and extensive post-sale notice, other than jurisdictional defenses, there is no defense to the issuance of a tax deed. Defenses (other than jurisdictional) that the party could have raised at the original hearing can no longer be raised, and the party's only alternative is to redeem. This means paying the additional penalties and costs. Consequently, notice after the sale cannot cure the lack of notice prior to the sale.

Thus, there is also a conflict between the opinion of the Illinois Supreme Court and the decision of this Court in *Armstrong v. Manzo.*

CONCLUSION

This conflict between the Illinois Supreme Court decision and the requirements of pre-sale notice set out in *Mennonite,* the conflict between the Illinois Opinion and footnote 6 of *Mennonite* as well as with the *Armstrong* case, all makes prospective bidders at Illinois tax sales hesitant to bid until this Court declares whether Illinois tax sale procedure is in accord with the due process requirements of the Constitution. Until this Court either affirms or reverses the decision of the Illinois Supreme Court, no tax purchaser bidding at such sales can feel secure in doing so, due to the possible infirmities imposed by virtue of the *Mennonite* and *Armstrong* decisions. This is especially true in light of the remandment by this Court

of two cases for further consideration by lower courts, namely *First Pennsylvania Bank v. Lancaster County Tax Claim Bureau*, 103 S.Ct. 3528 (1983) and *Russell Creek Land Co. v. Charjuan Inc.*, 103 S.Ct. 3530 (1983). Consequently, a decision by this Court is of utmost importance if the Illinois tax sale scheme is to be viable, and this is obviously why the Illinois Supreme Court suspended its mandate until this Court rules in this matter.

The questions presented by this appeal are substantial and require plenary consideration by the Court for resolution. Furthermore, it is submitted that this Court should reverse the decision of the Illinois Supreme Court, and hold the Illinois Tax Deed Statutory Scheme in violation of the due process clause of the Fourteenth Amendment for lack of effective notice prior to sale of property for delinquent taxes.

Respectfully submitted,

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APPENDIX

APPENDIX A

Docket No. 59336—Agenda 32—November 1983.

EDWARD J. ROSEWELL, Appellee, v. CHICAGO TITLE AND TRUST COMPANY *et al.*, Appellants.

JUSTICE CLARK delivered the opinion of the court:

On November 4, 1983, appellee, Edward Rosewell, treasurer and collector of Cook County, filed an application in the circuit court of Cook County seeking an order of judgment and sale against approximately 121,000 parcels of real estate which had been returned delinquent for the nonpayment of 1982 real estate taxes. This action was taken in accordance with section 235 of the Revenue Act of 1939 (Ill. Rev. Stat. 1981, ch. 120, par. 716). On November 10, 1983, appellant Chicago Title and Trust Company filed an objection to the application on the grounds that the proposed tax sale violated the due process clause of the United States Constitution (U.S. Const., amend. XIV (the State may not deprive any person of life, liberty or property without due process of law)) and the Illinois Constitution (Ill. Const. 1970, art. I, sec. 2). On November 16, 1983, taxpayer Fredrick Blum filed an objection on the same grounds as Chicago Title and Trust, as well as the alleged violation of his constitutional rights pursuant to 42 U.S.C. sec. 1983 (1976). The circuit court granted Rosewell's motion to dismiss and entered an order on November 18, 1983, permitting the tax sale to take place. We granted appellants' motion for direct appeal pursuant to Rule 302(b) (87 Ill. 2d R. 302(b)) and stayed enforcement of the circuit court's order pending the outcome of the expedited hearing before this court.

This appeal requires us to answer the question: Whether due process requires the county collector to give personal notice of an impending tax sale to all parties with an interest in the real estate. The tax sale procedure under

scrutiny is a mechanism for the county to collect delinquent real estate taxes after conventional means of collecting the tax have failed. In Illinois, real estate taxes become a prior lien against the land on January 1 of each year. (Ill. Rev. Stat. 1981, ch. 120, par 697.) The assessee receives notice by mail of the tax liability on an annual basis. Individuals who do not pay their annual real estate taxes are notified of the impending tax sale by certified mail at least 15 days before the application for judgment is to be filed with the circuit court. (Ill. Rev. Stat. 1981, ch. 120, pars. 706, 711.) The collector is also required to publish notice of an intent to file the application in a newspaper at least 10 days before the application is filed with the circuit court.

If the trial court grants the collector's application, the delinquent property is offered for sale at a public auction. A certificate of sale for each delinquent parcel of real estate is awarded to each successful bidder. The successful bidder is the party who is willing to pay the delinquent tax and accept the lowest penalty rate below 18%. (Ill. Rev. Stat. 1981, ch. 120, par. 726.) The owner of the property, or other interested party, may still redeem the property within two years of the tax sale by paying the delinquent tax plus a penalty, interest, and costs.

The tax buyer must file a petition for tax deed in the circuit court no more than five months nor less than three months before the redemption period expires. At this time, the tax buyer must serve notice upon all owners, occupants and parties interested in the real estate. The Revenue Act of 1939 requires personal notice by the sheriff, certified mail *and* three publications in a newspaper. (Ill. Rev. Stat. 1981, ch. 120, par. 744.) It is crucial to note that this notice differs from the notice provided before the tax sale. The Illinois statute requires that notice by mail must be given only to the party against whom the property taxes were assessed before the tax sale. Notice by publication is provided for all other interested parties.

If the redemption period expires without a response from parties interested in the real estate, the tax buyer may apply for a deed to the property after proving compliance with statutory service requirements. (Ill. Rev. Stat. 1981, ch. 120, par. 747.) The end result of such proceedings strikes many as harsh because the tax buyer can gain title to the real estate for a fraction of its value. However, this process has been upheld in light of the State's compelling interest in collecting taxes. (*Balthazar v. Mari, Ltd.*, (N.D. Ill. 1969), 301 F. Supp. 103, *aff'd* (1969), 396 U.S. 114, 24 L. Ed. 2d 307, 90 S. Ct. 397; *Catoor v Blair* (N.D. Ill. 1973), 358 F. Supp. 815, *aff'd* (1973), 414 U.S. 990, 38 L. Ed. 2d 231, 94 S. Ct. 345.) The tax buyer also takes a certain risk each time he or she bids on a parcel of land at a tax sale. The tax buyer must pay the delinquent taxes and can only recover his or her investment by the owner redeeming and paying the tax buyer the delinquent amount plus the penalty, interest, and costs, or by selling the property after the redemption period has expired.

Constitutional standards of due process were delineated by the United States Supreme Court in *Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U.S. 306, 314-15, 94 L. Ed. 865, 873, 70 S. Ct. 652, 657:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [Citations.] The notice must be of such nature as reasonably to convey the required information * * * But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied."

Originally, different standards of due process applied to *in personam* and *in rem* actions. (*Pennoyer v. Neff* (1878), 95 U.S. 714, 24 L. Ed. 565), but this distinction was abol-

ished by *Shaffer v. Heitner* (1977), 433 U.S. 186, 53 L. Ed. 2d 683, 97 S. Ct. 2569. Now, due process requires that the *Mullane* standard be applied to both *in personam* and *in rem* proceedings.

The most important criteria in the area of procedural due process is "reasonableness." The State must act reasonably before depriving a person of a property interest, but burdensome or elaborate efforts to notify interested parties are not constitutionally required. (See *Walker v. City of Hutchinson* (1956), 352 U.S. 112, 1 L. Ed. 2d 178, 77 S. Ct. 200; *Greene v. Lindsey* (1982), 456 U.S. 444, 72 L. Ed. 2d 249, 102 S.Ct. 1874, see also Note, *Due Process in Tax Sales in New York: The Insufficiency of Notice by Publication* 25 Syracuse L. Rev. 769 (1974).) Indeed, Justice John Marshall stated that, "it is part of common prudence for all those who have any interest in [property], to guard that interest by persons who are in a situation to protect it." *The Mary* (1815), 13 U.S. (9 Cranch) 126, 144, 3 L. Ed. 678, 684.

The basic contention projected in this appeal is that mortgages and other interested parties should be given the same notice as assessees before a tax sale takes place. The current Illinois statute provides for notice by mail to the assessee before the tax sale. We find this statutory provision entirely consistent with the due process standards in *Mullane* and its progeny. The name and address of the party against whom the taxes were last assessed is readily available in the county tax records; the addresses of all mortgagees, lienholders and other interested parties can only be ascertained by costly and time-consuming title searches on the 121,000 delinquent parcels of land. At the present time, this expense is borne by the tax buyer who must comply with stringent statutory notice requirements before the end of the redemption period. It is true that the mortgagee has to pay a penalty to redeem the property after the tax sale, but such a penalty is fair and reasonable when dealing with a party that has neglected to ensure that the mortgagor has paid the taxes when due. For example, the Internal Revenue

Service does not provide notice to taxpayers before assessing a penalty. It is a matter of public knowledge that all wage earners must file a tax return.

Similarly, Illinois permits mortgagees to avoid forfeiture by providing an opportunity to pay the delinquent property taxes plus a percentage penalty. In *Mullane*, the court noted, "Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency." (*Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U.S. 306, 318, 94 L. Ed. 865, 875, 70 S. Ct. 652, 659.) In the case at bar, the names and addresses of mortgagees are not readily at hand, but can only be gleaned from a paper mountain by 121,000 title searches. Even if the costs of a title search were passed onto the "consumer," the collector would be faced with a chaotic situation, with tax sales delayed by at least six months while all the title searches were analyzed.

The Supreme Court underscored this consideration when it noted:

> "We do not suggest, however, that a governmental body is required to undertake extraordinary efforts to discover the identity and whereabouts of a mortgagee whose identity is not in the public record." *Mennonite Board of Missions v. Adams* (1983), ... U.S. ....., ... n.4, 77 L. Ed. 2d 180, 187 n.4, 103 S. Ct. 2706, 2711 n.4.

We contrast this with the minimum amount of effort that it would take the mortgagee to learn of the impending tax sale. The parcels that will be offered at the tax sale are listed by tax number in numerical order when published in the newspaper prior to the proposed sale. A mortgagee or lienholder with the remotest interest in a parcel of land could ascertain the tax delinquency in a few minutes. Indeed, it is usually only the negligent or disorganized mortgagee who learns of the tax sale during the redemption period. We conclude that the Revenue

Act of 1939 is consistent with the due process criteria set down in *Mullane* and its progeny.

The appellants argue that *Mennonite Board of Missions v. Adams* (1983), ... U.S. ....., 77 L. Ed.2d 180, 103 S. Ct. 2706, provides good authority for overturning the Illinois statute. In *Mennonite*, the United States Supreme Court invalidated an Indiana statute that did not provide for notice by mail or personal service to mortgagees of property that had been sold for nonpayment of taxes. The *Mennonite* court noted that the Indiana statute "immediately and drastically diminished" the value of the mortgagee's security interest. (..... U.S. ....., ..., 77 L. Ed. 2d 180, 187, 103 S. Ct. 2706, 2711.) We read *Mennonite* as a decision in line with *Mullane* and its validity is limited to statutes such as Indiana's that affords inadequate due process protection.

The Illinois statute is clearly distinguishable from the Indiana statute. First, the Indiana statute allowed the tax sale to take place without any judicial proceeding. In Illinois, a circuit court judge must order the tax sale after considering an application from the county collector and any objections from interested parties. In Illinois, there is no drastic diminution of the mortgagee's security interest because taxes are a prior lien before and after the tax sale. Second, Indiana permitted the property to be sold to the highest bidder, an amount which could be greater than the amount of the delinquent taxes, whereas, in Illinois, the amount could not be greater than the delinquent taxes, plus interest, penalty and costs. Third, the Indiana statute granted a lien against the real property for the entire amount paid at the tax sale rather than the amount of the delinquent taxes. In Illinois, the amount of the lien is limited to the amount of the tax deficiency, plus interest, penalty and costs. Finally, Indiana permitted a deed to issue to the tax buyer automatically at the end of the redemption period, while Illinois requires a second judicial proceeding after all interested parties have received notice by mail. In Indiana, the property could be irrevocably lost without notice, a result that is impossi-

ble in Illinois. We also note that the Illinois statute has been affirmed by the United States Supreme Court on two occasions (*Balthazar v. Mari, Ltd.* (N.D. Ill. 1969), 301 F. Supp. 103, *aff'd* (1969), 396 U.S. 114, 24 L. Ed. 2d 307, 90 S. Ct. 397; *Catoor v. Blair* (N.D. Ill. 1973), 358 F. Supp. 815, *aff'd* (1973), 414 U.S. 990, 38 L. Ed. 2d 231, 94 S. Ct. 345.)

We do not agree with defendant's argument that cases decided subsequent to *Mennonite* erode the validity of the Illinois statute. The United States Supreme Court vacated three lower court decisions in light of Mennonite: *First Pennslyvania Bank, N.A. v. Lancaster County Tax Claim Bureau* (1983), ... U.S. ....., 77 L. Ed. 2d 1381, 103 S. Ct. 3528; *Russell Creek Land Co. v. Charjuan, Inc.* (1983), ... U.S. ....., 77 L. Ed. 2d 1382, 103 S. Ct. 3529-30, and *Continental Insurance Co. v. Moseley* (1983), ... U.S. ....., 77 L. Ed. 2d 1383, 103 S. Ct. 3530. However, careful examination of the statutes construed in these cases reveals that they are substantially deficient in due process protection under *Mullane* as well as *Mennonite*. For example, *Lancaster* and *Continental Insurance* are based on statutes that provide for notice only by publication, a situation not remotedly analogous to the case at bar. We are more persuaded by the decision of the Oregon supreme court in *Grant County v. Guyer* (1983), 296 Or. 14, ... P.2d ....., which upheld the Oregon tax sale statute in light of *Mennonite*.

Mennonite does contain *dicta* that emphasizes the need for prompt notice to the mortgagee, but this *dicta* concedes that constructive notice is constitutionally sufficient if the mortgagee is not *reasonably identifiable*. (Emphasis added.) The court noted:

> "When the mortgagee is identified in a mortgage that is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address, or by personal service. But unless the mortgagee is not reasonably identifiable, constructive notice alone does

not satisfy the mandate of *Mullane*." (*Mennonite Board of Missions v. Adams* (1983), ... U.S. ....., ..., 77 L. Ed. 2d 180, 187, 103 S. Ct. 2706, 2711.)

As we have previously stated herein, notice by mail is given to the mortgagee prior to the expiration of the redemption period.

Although we can detect no due process infirmities with the Illinois statute, we are also mindful of the enormous public policy considerations underpinning the tax sale procedure. Tax revenues are literally the lifeblood of government. At no time since the great depression have the fiscal necessities of government at all levels and the need for dependable tax collections been greater than at present. *Township of Montville v. Block 69 Lot 10* (1977), 74 N.J. 1, 31, 376 A.2d 909, 924 (Conford, J., dissenting): see also Comment, *Notice by Publication: Walker v. City of Hutchinson*, 24 U. Chi. L. Rev. 553 (1957); Note, *The Constitutionality of Notice by Publication in Tax Sale Proceedings* 84 Yale L.J. 1505 (1975).

Since we have addressed the merits of this appeal, we have no occasion to address the issue of standing raised by appellant Blum. We therefore conclude that the notice provisions of the Revenue Act of 1939 are consistent with due process protection afforded by the United States Constitution and the Illinois Constitution. We now vacate the stay order granted pending the outcome of this appeal, and affirm the judgment of the circuit court of Cook County.

Judgment affirmed.

APPENDIX B

IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE MATTER OF THE APPLICATION OF THE COOK COUNTY COLLECTOR, Etc., for the Year 1982,

v.

CHICAGO TITLE AND TRUST,
and
FREDRICK BLUM,

Objectors.

Misc. No. 83-30
Obj. Nos. 152, 327

ORDER

This cause coming on to be heard on motion of the Cook County Treasurer and Ex Officio County Collector of Cook County to dismiss the objections of Chicago Title & Trust Company, Obj. No. 152, and Fredrick Blum, Taxpayer, No. 327, and the Court being informed, and having heard argument of counsel, and having examined authorities,

The Court rules that the notice provisions of the Illinois Revenue Act, as amended, provides for adequate notice to satisfy state and federal requirements of due

process under those respective constitutions to possessors of property interests in real estate upon such judgment and order of sale as sought under the Collector's application for judgment, consistent with the exposition of these rights in *Mennonite Bd. of Missions v. Adams*, ... U.S. ..... 103 S. Ct. 2706 (1983), and on this ground the Court grants the motions of the Collector to dismiss the respective objections, and the Court finds that there is no just reason to delay enforcement or appeal of this order; and the Court intends this to be a final and appealable order, and the Court certifies that the issues raised in this case are matters as to which the public interest requires prompt expedition by the Supreme Court.

Enter: November 17, 1983

/s/ Joseph Schneider
Judge

APPENDIX C

No. 59336

IN THE
SUPREME COURT OF ILLINOIS

To The
SUPREME COURT OF THE UNITED STATES

IN THE MATTER OF THE APPLICATION OF EDWARD J. ROSEWELL, COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS, FOR JUDGMENT AND ORDER OF SALE AGAINST LANDS AND LOTS UPON WHICH GENERAL REAL ESTATE TAXES AND SPECIAL ASSESSMENTS REMAIN UNPAID FOR THE YEAR 1982, etc.,

Defendants-Appellees,

OBJECTION OF CHICAGO TITLE AND TRUST COMPANY, As Trustee, individually and on behalf of all persons similarly situated,

and

OBJECTION OF FREDRICK BLUM,

Objectors-Appellants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Objectors-Appellants, CHICAGO TITLE & TRUST COMPANY, as Trustee, individually, and on behalf of all persons similarly situated, and FREDRICK BLUM, hereby appeal to the Supreme Court of

the United States from the final judgment of the Supreme Court of Illinois filed on January 20, 1984, affirming the judgment of the Circuit Court of Cook County, and remanding the cause to that Court with directions to dismiss the complaint.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

/s/ Maurice P. Raizes
Cohon, Raizes & Regal
208 South LaSalle Street
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(312) 726-2252
Attorneys for CHICAGO TITLE AND TRUST COMPANY, as Trustee, Objector-Appellant.

/s/ Marshall Patner
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(312) 263-4040
Attorney for FREDRICK BLUM, Objector-Appellant

[Proof of Service, showing personal delivery to the State's Attorney's office on April 9, 1984, omitted in printing.]

This Notice of Appeal was filed with the Clerk of the Illinois Supreme Court on April 12, 1984.

APPENDIX D

Statutory Provisions

Section 225 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120,§706

706. Advertisement and application for judgment

§ 225. At any time after the first day of September next after all of such delinquent taxes on lands and lots shall become due in any year, or next after any taxes are paid under protest in any year, the Collector shall publish an advertisement, giving notice of the intended application for judgment for sale of such delinquent lands and lots, and for judgment fixing the correct amount of any tax paid under protest, in a newspaper published in the township or road district, as the case may be in which the real estate on which the delinquent taxes are due, is located and if there is no such newspaper published in the township or road district, then in some newspaper in the same county as the township or road district, to be selected by the county Treasurer. Provided, however, where the real estate is situated in a city the population of which exceeds 1,000,000 inhabitants such advertisement may be in any newspaper published in the same county, and where the lands or lots are situated in an incorporated town which has superseded a civil township then such advertisement shall be in a newspaper published in such incorporated town or if there is no such newspaper published in such incorporated town, then in a newspaper published in the county in which such lands or lots are located: Provided, further, that in the 10 years next following the completion of a general reassessment of real property in any county containing 1,000,000 or more inhabitants, made pursuant to an order of the Department, such publication shall be made not sooner than 10 days nor more than 90 days after the date when all unpaid

taxes on lands and lots shall become delinquent and shall begin to bear interest. Such advertisement shall be once published at least 10 days previous to the day on which judgment is to be prayed, and shall contain a list of the delinquent lands and lots upon which the taxes or any part thereof remain due and unpaid, the names of owners, if known, the total amount due thereon, and the year or years for which they are due. No list of the lands or lots upon which taxes shall have been paid in full under protest, the amounts so paid on, nor the names of persons paying them, shall be included in the list. Such collector shall give notice that he will apply to the circuit court on a specified day for judgment against the lands and lots for the taxes, and costs, and for an order to sell the lands and lots for the satisfaction thereof, and for a judgment fixing the correct amount of any tax paid under protest; and shall also give notice that on the ..... Monday next succeeding the date of application all the lands and lots for the sale of which an order shall be made, will be exposed to public sale at the building where the seat of county government is located, for the amount of taxes, and the cost due thereon; and the advertisement published according to the provisions of this section shall be deemed to be sufficient notice of the intended application for judgment and of the sale of lands and lots under the order of the court, or for judgment fixing the correct amount of any tax paid under protest. Where the publisher of any paper that may have been selected by the collector shall be unable or unwilling to publish such advertisement, the collector shall select some other newspaper, having due regard to the circulation of such paper.

Provided, that in all cities, villages and incorporated towns in counties containing a population exceeding 1,000,000 inhabitants by the last preceding census of the United States or of this State, separate advertisements may be made giving notice of an intended application for judgment and for an order of sale on account of delinquent special assessments at any time after the first day of August, after such special assessments shall have become

delinquent, the procedure in such case to be in all other respects, except as to the time of making advertisement and application for judgment and sale, the same as in the case of delinquent general taxes. There shall not be included in the advertisement and application for judgment for sale provided by this section any lands or lots which are included in the advertisement and application for judgment for sale provided by section 235a of this Act.[1]

Amended by P.A. 77-2274, § 1, eff. Oct. 1, 1972.

[1] Paragraph 716a of this chapter.

Section 230 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §711

711. Notice to person in whose name taxes assessed before tax sale

§ 230. Not less than 15 days before the date of application for judgment for sale of delinquent lands or lots, the county collector shall mail, by registered or certified mail, a notice or letter of the forthcoming application for judgment for sale to the person shown by the current collector's warrant book to be the party in whose name the taxes were last assessed. The notice shall include the intended dates of application for judgment and sale of such lands or lots and of the commencement of such sale and a description of such lands or lots. The county collector must present proof of such mailing to the court along with the application of judgment.

The cost of such registered or certified mailing shall be recoverable by the collector from the proceeds of the sale.

Amended by P.A. 78-606, § 1, eff. Oct. 1, 1973.

Section 235 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §716

716. Proceedings by court—Form of order—Cure of error or informality

§ 235. The court shall examine the list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of the lands or lots, to the entry of judgment against them, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be: Provided, that no person shall be permitted to offer any such defense unless such writing specifying the particular cause of objection shall be accompanied by an official original or duplicate tax collector's receipt, showing that all taxes to which objection is made have been paid under protest pursuant to the provisions of section 194 of this Act;[1] and it shall be the duty of all tax collectors to furnish such duplicate receipt without charge.

If any party objecting to any tax paid under protest is entitled to a refund of the amount, or any part thereof, so paid under protest, the court shall enter judgment accordingly. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot or part of a track or lot, for each kind of tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:

Whereas, due notice has been given of the intended application for a judgment against such lands and lots, and no sufficient defense having been made or cause shown why judgment should not be entered against such lands and lots, for taxes (special assessments, if any), interest, penalties and costs due and unpaid thereon for the year or years herein set forth, therefore it is considered by

the court that judgment be and is hereby entered against the aforesaid tract, or tracts, or lots of land, or parts of tracts or lots (as the case may be), in favor of the People of the State of Illinois, for the sum annexed to each, being the amount of taxes (and special assessments, if any), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be sufficient to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs annexed to them severally, be sold as the law directs.

The order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof; and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes, or any omission or defective act of any other officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or by the person (in the presence of the court) from whose neglect or default it was occasioned. Provided, that where separate advertisement and application for judgment and order of sale is made on account of delinquent special taxes or special assess-

ments in all cities, villages and incorporated towns in counties containing a population exceeding 1,000,000 inhabitants by the last preceding census of the United States or of this State, and in cities, villages and incorporated towns in other counties in which the county board by resolution has extended the time in which the return, required in section 209,[2] may be made, the procedure shall in all respects be the same as in this section prescribed, except that there shall be two separate judgments and orders for sale, one on account of delinquent special taxes and special assessments and the other on account of delinquent general taxes.

Amended by P.A. 76-2254, § 1, eff. July 1, 1970.

[1] Paragraph 675 of this chapter.

[2] Paragraph 690 of this chapter.

Section 238 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §719

SALE OF REAL PROPERTY FOR DELINQUENT TAXES

719. Execution of tax judgments in counties of 1,000,000 or more

§ 238. If judgment is rendered by any court, at any time, against any lands or lots, for any tax or in counties having a population of 1,000,000 or more inhabitants for any tax or special assessment, the county collector shall, after publishing a notice for sale, in compliance with the requirements of Section 225 of this Act,[1] proceed to execute such judgment by the sale of lots and lands against which such judgment has been rendered: Provided, however, that, in the case of an appeal from any such judgment, if the party filing notice of appeal shall, at the time of filing the notice of appeal, deposit with the county collector an amount of money equal to the amount of the judgment and costs, the collector shall not sell until such appeal is disposed of.

Amended by P.A. 79-451, § 1, eff. Oct. 1, 1975.

[1] Paragraph 706 of this chapter.

Section 243 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §724

724. Manner of conducting sale

§ 243. The collector, in person or by deputy, shall attend at the court house in his county, on the day specified in the notice for the sale of real estate for taxes, and then and there, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, proceed to offer for sale, separately and in consecutive order, each tract of land or town or city lot in the list on which the taxes, special assessments, interest or costs have not been paid. Provided, however, that in any county containing 1,000,000 or more inhabitants such offer for sale shall be made between the hours of eight o'clock in the forenoon and eight o'clock in the evening; and the collector's office shall be kept open during all hours in which such sale shall be in progress. The sale shall be continued from day to day, until all tracts or lots in the delinquent list shall be sold or offered for sale: Provided, however, that any city, village or town interested in the collection of any tax or special assessment, may, in default of bidders for same, withdraw from collection any such special assessment levied against any such tract of land or lot by the corporate authorities of such city, village or town, and in case of such withdrawal there shall be no sale of such tract of land or lot on account of the delinquent special assessment thereon.

Amended by P.A. 76-2254, § 1, eff. July 1, 1970.

Section 245 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §726

726. What bid accepted

§ 245. The person at such sale offering to pay the amount due on each tract or lot for the least percentage thereon as penalty, shall be the purchaser of such tract or lot: Provided, that no bid shall be accepted for a penalty exceeding 18% of the amount of such tax or special assessment.

Amended by P.A. 82-663, § 1, eff. Nov. 3, 1981.

Section 248 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §729

729. Certificate of purchase—Withdrawal or forfeiture of special assessments

§ 248. The county clerk shall make out and deliver to the purchaser of any lands or lots sold as aforesaid a certificate of purchase, to be countersigned by the collector, describing the land or lots sold as they were described in the delinquent list, date of such sale, the amount of taxes, special assessments, interest and costs for which they were sold and that payment has been made therefor. If any person shall become the purchaser of more than one tract, block, lot or piece of real estate owned by one party or person, such purchaser may have the whole or one or more of them included in one certificate, but separate certificates shall be issued in all other cases. Such certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee or his legal representatives, all the right and title of the original purchaser.

In counties having a population of 1,000,000 or more inhabitants, the county clerk, upon request of the city comptroller or other municipal officer authorized by the city council or board of trustees of any city, village or town to make such request shall issue to such city, village or town, a certificate of withdrawal or forfeiture countersigned by the county collector for each lot, tract or parcel of land withdrawn from collection or forfeited for nonpayment of any special assessment. Such certificate of withdrawal or forfeiture shall describe the land or lots withdrawn or forfeited as they were described in the delinquent list, the date of such withdrawal or forfeiture, and the amount of the special assessment, interest and costs.

Amended by P.A. 76-2254, § 1, eff. July 1, 1970.

Section 253 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §734

REDEMPTIONS

734. Time and conditions of redemption

§ 253. Real property sold under the provisions of this Act may be redeemed at any time before the expiration of 2 years from the date of sale, or 6 months from the date of sale pursuant to Section 235a[1] for vacant non-farm real estate, for real estate containing an improvement consisting of a structure or structures each of which contains 7 or more residential units and for real estate which is commercial or industrial property, or before the expiration of 2 years and six months from the date of sale if the real property is improved with a structure consisting of at least one and not more than 6 dwelling units if one or more of the dwelling units is occupied by the owner or owners thereof as his principal place of residence at the date of the expiration of 2 years from the date of sale, by payment in legal money of the United States, or by cashier's check, certified check, post office money order or bank money order issued by a national or state bank that is insured by the Federal Deposit Insurance Corporation, to the county clerk of the proper county, the amount for which the property was sold, together with the amount of the penalty bid at the sale, unless the property has been purchased pursuant to Section 272 of this Act,[2] in which event the penalty bid shall be 12% for purchases occurring before November 3, 1981 and 18% for purchases occurring on or after November 3, 1981, if redeemed at any time before the expiration of 6 months from the day of sale; if between 6 and 12 months, the amount for which the property was sold, together with twice the amount of the penalty bid; if between 12 and 18 months, the amount for which the property was sold, together with 3 times the amount of the penalty bid; if between 18 months and 2 years, the amount for which the property was sold, together with 4 times the amount of the penalty bid; if between 24 months and 30 months,

the amount for which the property was sold, together with 5 times the amount of the penalty bid at the sale. Real property sold under the provisions of this Act may be redeemed by owners and persons interested in the real estate, other than undisclosed beneficiaries of Illinois land trusts, whether or not the interest in the property is recorded or filed. The person redeeming shall also pay the amount of all taxes and special assessments accruing after such sale with 18% penalty thereon, for each year or portion thereof intervening between the time of the payment of the subsequent tax or special assessment and the time of redemption, in all cases where the purchaser at the tax sale, or his assignee, pays any subsequent tax or special assessment after it has become delinquent or, after the holder of the certificate of purchase has filed a petition for a tax deed pursuant to Section 266 of this Act;[3] also, all moneys paid by the purchaser at the tax sale, or his assignee, to redeem from any forfeiture or tax sale which occurred subsequent to the sale; also, all fees paid to the registrar of titles of the proper county incident to registering tax certificates in compliance with "An Act concerning land titles", approved May 1, 1897, as now or hereafter amended;[4] also all fees paid to the clerk of the circuit court in connection with filing a petition pursuant to Section 266 of this Act; also all costs paid to the county clerk for the mailing of notice by the county clerk pursuant to Section 241a of this Act;[5] also all costs of service by a sheriff or coroner pursuant to Section 263 of this Act;[6] also all costs paid to the clerk of the circuit court for the mailing of notice by the clerk of the circuit court pursuant to Section 263 of this Act, and it is the duty of the county clerk to include in the certificate of deposit for redemption the amount of the subsequent taxes, special assessments, redemptions from subsequent forfeitures or tax sales, and fees of the registrar of titles and fees and costs of the clerk of the circuit court paid by the purchaser or holder of the tax certificate. The county clerk shall not be required to include any subsequent taxes, special assessments or, redemptions from subsequent forfeitures or tax sales, fees of the reg-

istrar of titles and fees and costs of the clerk of the circuit court in his certificate of deposit for redemption, nor shall the payment thereof be a charge upon the land sold for taxes, unless the purchaser, assignee, or holder of the tax certificate of sale shall have filed and have posted by the county clerk on the tax judgment, sale, redemption and forfeiture record, not less than 30 days prior to the expiration of the period of redemption, an official, original or duplicate receipt for the payment of subsequent taxes, special assessments, redemptions from subsequent forfeitures or tax sales, fees of the registrar of titles and fees and costs of the clerk of the circuit court and it shall be the duty of the tax collector, county clerk, clerk of the circuit court and registrar of titles to furnish duplicate receipts. The person redeeming shall also pay all costs and expenses of receivership pursuant to Section 253a of this Act[7] to the extent that these costs and expenses exceed any income from the property in question, provided the costs and expenditures have been approved by the court appointing the receiver and a certified copy of the order of approval is filed and posted by the county clerk on the tax judgment, sale, redemption and forfeiture record before redemption. In the event that income should exceed expenditures, net income is to be deposited with the clerk of the court ordering the tax sale and shall be distributed upon court order to the owner or owners of the property in question in proportions determined by the court.

In the event that the property in question is not redeemed, no deficiency judgment shall be taken on account of the receivership proceedings, against the owner or owners of the property.

Real property may also be redeemed after the expiration of the initial redemption period, until expiration of the extended period of redemption, by payment in legal money of the United States, or by cashier's check, certified check, post office money order or bank money order issued by a national or state bank that is insured by the Federal Deposit Insurance Corporation, to the county

clerk, of the amount for which the property was sold, the penalties provided herein for the initial redemption period of the sale together with interest thereafter at 6% per annum on the face amount of tax sales, and subsequent taxes, special assessments, fees of the registrar of titles and costs and expenses of receivership paid by the purchaser as provided in this Act, and advertising fees and $5 costs. Tenants in common or joint tenants shall be allowed to redeem their individual interests in real property sold under the provisions of this Act in the same manner and under the terms specified in this Section for the redemption of other real property; any redemption made shall be presumed to have been made by or on behalf of the owners and persons interested in the real property and shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the right of the person making the redemption to be reimbursed by the person benefited, and no redemption shall be held invalid by reason of the failure of the person redeeming to have an interest of record in the property redeemed, other than undisclosed beneficiaries of Illinois land trusts.

Any person redeeming hereunder at a time subsequent to the filing of a petition under Sections 266 or 266a,[8] who desires to preserve his right to defend against a petition for any reason, shall accompany his deposit for redemption with a writing substantially in the following form:

REDEMPTION UNDER PROTEST

Vol. No. .....

Permanent Real Estate Index No. or Legal Description .....

Original Amount of Tax $.....

Amount Deposited for Redemption $.....

Name of Petitioner .....

Tax Year Included in Judgment .....

Date of Sale .....

Expiration Date of the Period of Redemption .....

To the county clerk of ..... County:

This redemption is made under protest for the following reasons:

(here set forth and specify the grounds relied upon for the objection)

Name of party redeeming .....

Address .....

Any grounds for the objection not specified at the time of the redemption under protest shall not be considered by the court.

The person protesting shall present the county clerk 3 copies of the written protest signed by himself. The clerk shall write or stamp the date of receipt upon the copies and sign them. He shall retain one of the copies, another he shall deliver to the person making the redemption and the third he shall forward to the petitioner named therein.

The county clerk shall enter the redemption as provided in Section 241[9] and shall note the redemption under protest. The redemption money so deposited shall not be distributed to the holder of the certificate of sale but shall be retained by the county clerk pending disposition of the petition filed under Section 266.

Redemption under protest constitutes the appearance of the person protesting in the proceedings under Section 266 and that person shall present his defense to the petition for tax deed at the time which the court directs. Failure to appear and defend shall constitute a waiver of the protest and the court shall order the redemption money distributed to the holder of the certificate of sale upon surrender of that certificate and shall dismiss the proceedings.

When the party redeeming appears and presents his defense, the court shall hear and determine the matter. Upon a finding that there has been compliance with all of the provisions of this Act and that the petitioner would

be entitled to a deed in the absence of the redemption under protest, the court shall order the protest stricken and direct the county clerk to distribute the redemption money upon surrender of the certificate of sale and shall order the party redeeming to pay the petitioner reasonable expenses, actually incurred, including the cost of withheld redemption money, together with a reasonable attorney fee. Upon a finding sustaining the protest in whole or in part, the court may declare the sale to be a sale in error under Section 260 or Section 266,[10] and shall direct the county clerk to return all or a part of the redemption money or deposit to the party redeeming.

Amended by P.A. 82-783, Art. III, § 62, eff. July 13, 1982; P.A. 82-987, § 1, eff. Sept. 9, 1982.

[1] Paragraph 716a of this chapter.

[2] Paragraph 753 of this chapter.

[3] Paragraph 747 of this chapter.

[4] Chapter 30, ¶ 45 et seq.

[5] Paragraph 722a of this chapter.

[6] Paragraph 744 of this chapter.

[7] Paragraph 734a of this chapter.

[8] Paragraph 747 or 747a of this chapter.

[9] Paragraph 722 of this chapter.

[10] Paragraph 741 or 747 of this chapter.

Article III of P.A. 82-783, the 1982 Revisory Act, resolved multiple actions of the 82nd General Assembly.

P.A. 82-987 incorporated the amendment by P.A. 82-783, Art. III.

Section 263 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §744

744. Extension of time for redemption—Notice to owner, occupants and parties interested—Service of notice—Publication of notice

§ 263. The purchaser or assignee of any purchaser of real estate sold for non-payment of general taxes or special assessments may extend the period of redemption for

the real estate before the expiration of 2 years from the date of sale or thereafter prior to the expiration of any extended period of redemption for a period which will expire not later than 3 years from the date of sale by filing with the county clerk of the county in which the real estate is located a written notice to that effect describing the real estate, stating the date of the sale and specifying the extended period of redemption. If prior to the expiration of the period of redemption or extended period of redemption a petition for tax deed has been filed pursuant to Section 266 of this Act,[1] upon application of the petitioner, the court shall allow the purchaser or assignee to extend the period of redemption after expiration of 2 years from the date of sale or after expiration of any extended period of redemption, provided that any extension allowed by the court will expire not later than 3 years from the date of sale. If the time of redemption is extended, the purchaser or assignee must give the notices herein provided at the specified times prior to the expiration of the extended period of redemption by causing a sheriff (or if he is disqualified, a coroner) of the county in which the real property, or any part thereof, is located to serve the notices as hereafter provided.

A purchaser or assignee shall not be entitled to a tax deed to the premises sold unless not less than 3 months nor more than 5 months prior to the expiration of the period of redemption he gives notice of the sale and the date of expiration of the period of redemption to the owners, occupants and parties interested in the premises as hereafter provided.

The Notice to be given to the parties shall be in at least 10 point type in the following form completely filled in:

TAX DEED NO. ..... FILED .....

TAKE NOTICE

County of .....

Date Premises Sold .....

Certificate No. .....

Sold for General Taxes of (year) .....

Sold for Special Assessment of (Municipality) and special assessment number .....

Warrant No. ..... Inst. No. .....

THIS PROPERTY HAS BEEN SOLD FOR DELINQUENT TAXES

Property located at .....

Legal Description of Permanent Index No. .....

.....

.....

This notice is to advise you that the above property has been sold for delinquent taxes and that the period of redemption from the sale will expire on .....

This notice is also to advise you that a petition has been filed for a tax deed which will transfer title and the right to possession of this property if redemption is not made on or before .....

This matter is set for hearing in the Circuit Court of this county in ..., Illinois on ...

You may be present at this hearing but your right to redeem will already have expired at that time.

YOU ARE URGED TO REDEEM IMMEDIATELY TO PREVENT LOSS OF PROPERTY

Redemption can be made at any time on or before ... by applying to the County Clerk of ... County, Illinois at the County Court House in ..., Illinois.

For further information contact the County Clerk

.....

Purchaser or Assignee.

The purchaser or assignee shall give the above notice by causing it to be served by a sheriff (or if he is disqualified, by a coroner) of the county in which the real property, or any part thereof, is located upon owners who reside on any part of the real estate sold by leaving a copy of the notice with such owners personally.

Such notice shall be served upon all other owners and parties interested in the real estate sold, if upon diligent inquiry they can be found in the county, and upon the occupants of the real estate in the following manner: as to individuals, by (1) leaving a copy of the notice with such person personally or (2) by leaving a copy at his usual place of abode with some person of the family, of the age of 13 years and upwards, and informing that person of the contents thereof, provided the person making the service shall also send a copy of the notice by registered or certified mail, return receipt requested, to such party at his usual place of abode; as to public and private corporations, municipal, governmental and quasi-municipal corporations, partnerships, receivers and trustees of corporations, by leaving a copy of the notice with the person designated by the Civil Practice Law[2] and all existing and future amendments thereto.

If the real estate sold has more than four dwellings or other rental units, and has a managing agent or party who collects rents, such party shall be deemed the occupant and shall be served with notice in lieu of the occupants of the individual units. If such real estate has no dwellings or rental units, but economic or recreational activities are carried on therein, the person directing such activities shall be deemed the occupant. Holders of rights of entry and possibilities of reverter shall not be deemed parties interested in the real estate. Where a party interested in the real estate is a trustee, notice served upon the trustee shall be deemed to have been served upon any beneficiary or note holder thereunder unless the holder of the note is disclosed of record. Where a judgment constitutes a lien upon the premises sold, the holder thereof shall be served with notice if the name of the judgment debtor as shown in the transcript, certified copy of memorandum of judgment filed of record is identical, as to given name and surname, with the name of the party interested as it appears of record.

If any owner or party interested upon diligent inquiry and effort cannot be found and served with notice as

herein provided in the county, and the person in actual occupancy and possession is tenant to, or in possession under the owners or the parties interested therein, then service of notice upon the tenant, occupant or person in possession shall be deemed service upon the owners or parties interested.

If any owner or party interested upon diligent inquiry and effort cannot be found and served with notice as herein provided in the county, then the person making the service shall send a copy of the notice by registered or certified mail, return receipt requested, to such party at his residence, if ascertainable. If the real estate is located in a municipality in a county with a population under 2,000,000, such purchaser or assignee shall also publish a notice as to such owner of party interested, in some newspaper published in the municipality. If the real estate is not in such municipality, or if no newspaper is published therein, or if the real estate is in a county with a population of 2,000,000 or more, then the notice shall be published in some newspaper in the county. If no newspaper is published in such county, then such notice shall be published in the newspaper that is published nearest the county seat of the county in which such real estate is located. If the owners and parties interested in the real estate upon diligent inquiry are unknown to the purchaser or assignee, then such publication as to such owner or party interested, may be made to unknown owners or parties interested. Such notice by publication shall be given three times. The publication shall contain notice of the filing of the petition for tax deed, the date on which the petitioner intends to make application for an order on the petition that a tax deed issue, a description of the real estate, the date upon which the real estate was sold, for which taxes or special assessments it was sold and when the period of redemption will expire. Such notice of publication shall include not more than one parcel of real estate listed and sold in one description, except where more than one parcel of real estate is owned by one party or person, in which case all of the parcels owned by such persons may be included in one notice.

In addition to the notice required to be served not less than 3 months nor more than 5 months prior to the expiration of the period of redemption, such purchaser or assignee shall prepare and deliver to the clerk of the Circuit Court of the county in which the real estate sold is located, the notice provided for herein together with sufficient funds to effect mailing of the notice by certified mail, return receipt requested. The form of notice to be mailed by the clerk shall be identical in form to that hereinbefore provided for service upon owners residing upon the real estate sold, except that it shall bear the signature of the clerk and shall designate the parties to whom it is to be mailed. The clerk as his option may furnish the form. The clerk shall promptly mail the notices delivered to him by certified mail, return receipt requested. The certificate of the clerk that he has mailed such notices, together with the return receipts, shall be filed in and made a part of the court record. Such notices shall be mailed to the owners of the premises at their last known addresses, and to such other parties as shall be entitled to service of notice as occupants as hereinabove specified.

The sheriff or coroner making the service of notice pursuant to this Section shall endorse his return thereon and file it with the Clerk of the Circuit Court and it shall be a part of the court record. If a sheriff or coroner to whom any notice is delivered for service, neglects or refuses to make the return, the purchaser or assignee may petition the court to enter a rule requiring the sheriff or coroner to make return of the notice on a day to be fixed by the court, or to show cause on that day why he should not be attached for contempt of the court. The purchaser or assignee shall thereupon cause a written notice of the rule to be served upon the sheriff or coroner. If good and sufficient cause be not shown to excuse the sheriff or coroner, the court shall adjudge him guilty of contempt, and shall proceed to punish him as in other cases of contempt.

Amended by P.A. 82-783, Art. IV, §43, eff. July 13, 1982; P.A. 82-783, Art. XI, § 252, eff. July 13, 1982; P.A. 82-1057, Art. II, § 17, eff. Feb. 11, 1983.

[1] Paragraph 747 of this chapter.

[2] Chapter 110, ¶ 2-101 et seq.

Article II of P.A. 82-1057, the 2nd 1982 Revisory Act, resolved multiple actions of the 82nd General Assembly through P.A. 82-1016.

Section 266 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1983, ch. 120, §747

747. Petition for deed—Notice—Issuance of deed

§ 266. At any time within 5 months prior to the expiration of the time of redemption from the sale of any real estate for non-payment of taxes or special assessments, pursuant to judgment and order of sale on the County Collector's application for judgment and order of sale under Section 225 of this Act,[1] the purchaser or his assignee may file a petition in the circuit court in the same proceeding wherein the judgment of sale was entered upon which the sale was had, praying that the court direct the county clerk to issue a tax deed if the real estate is not redeemed from the sale. Such petition shall be accompanied by a filing fee of $30 if one parcel is involved and an additional filing fee of $10 for each additional parcel involved. Notice of the fact of filing the petition and the date on which the petitioner intends to make application for an order on the petition that a deed issue if the real estate is not redeemed from the sale shall be given to occupants, owners and persons interested in the real estate in the same manner as provided in Section 263,[2] except that only one publication is required. The notice to occupants and the notice by publication shall be given not less than 3 months prior to the date fixed for making application that a deed issue. The purchaser or his assignee may, if he desires, insert in the notice or notices required by Section 263 the fact of filing the petition for a tax deed and the date on which he intends to

apply in the circuit court for an order for a deed if the real estate is not redeemed from the sale, in which case the notice provided by this Section is not required. The county clerk shall be notified of the filing of the petition and any person owning or interested in the real estate may, if he desires, appear in the proceeding. If the time of redemption expires and the real estate has not been redeemed from the sale and all taxes and special assessments which became due and payable subsequent to the sale have been paid and all forfeitures and sales which occur subsequent to the sale have been redeemed and the notices required by law have been given and the petitioner has complied with all the provisions of law entitling him to a deed, the court shall so find and shall enter an order directing the county clerk on the production of the certificate of purchase and a certified copy of the order, to issue to the purchaser or his assignee a tax deed. The court shall insist on strict compliance with the provisions of Section 263 of this Act; prior to the entry of an order directing the issuance of a tax deed, the petitioner shall furnish the court with a report of proceedings of the evidence received on the application for tax deed and such report of proceedings shall be filed and made a part of the court record. The county clerk is entitled to a fee of $5 for the issuance of the deed. The clerk may not include in such a deed more than one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where several such lots, blocks, tracts or pieces of land are owned by one party or person. If the court refuses to enter an order directing the county clerk to execute and deliver the tax deed, because of the failure of the purchaser to fulfill any of the above provisions, it shall order the return of the purchase price forthwith as in case of sales in error in all cases where the purchaser, or his assignee has made a bona fide attempt to comply with the statutory requirements for the issuance of the tax deed. The court may, and upon application therefor shall enter an order to place the grantee in possession of the real estate and may enter such orders and issue such writs as may be necessary or desirable

to maintain the grantee in possession of the real estate. Tax deeds issued pursuant to this Section are incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed. However, relief from such order may be had under Section 2-1401 of the Code of Civil Procedure, as heretofore or hereafter amended,[3] in the same manner, upon the same grounds and to the same extent as may be had under that Section with respect to final orders, and judgments in other proceedings. This Section shall be liberally construed so that tax deeds herein provided for shall convey merchantable title. In the event such real estate has been taken pursuant to the provisions for the exercise of the right of emiment domain under Article VII of the Code of Civil Procedure, as now or hereafter amended,[4] the tax purchaser shall be entitled to the award which is the substitute for such real estate. This definition providing that eminent domain awards are to be substituted in lieu of the property and that tax deeds shall apply to such award shall be construed as declaratory of the existing law and not as a new enactment. Tax deeds issued pursuant to this Section are subject to Section 266b of this Act.[5]

Amended by P.A. 82-783, Art. XI, § 252, eff. July 13, 1982.

[1] Paragraph 706 of this chapter.

[2] Paragraph 744 of this chapter.

[3] Chapter 110, ¶2-1401.

[4] Chapter 110, ¶7-101 et seq.

[5] Paragraph 747b of this chapter.